

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARSHA DAVIS

Claimant

VS.

ELECTRO-WIRE

Respondent

AND

AETNA CASUALTY & SURETY COMPANY

Insurance Carrier

Docket No. 176,029

ORDER

Respondent requested Appeals Board review of the Award entered by Special Administrative Law Judge Douglas F. Martin on April 16, 1996. The Appeals Board heard oral argument in Topeka, Kansas, on September 12, 1996.

APPEARANCES

Claimant appeared by and through her attorney, Jan L. Fisher of Topeka, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Clifford Stubbs, appearing for John David Jurcyk of Lenexa, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record and the stipulations contained in the Award of the Special Administrative Law Judge.

ISSUES

Nature and extent of claimant's disability is the only issue requested by the respondent for review by the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the whole evidentiary record and considering the briefs and arguments of the parties, the Appeals Board finds that the Award of the Special Administrative Law Judge entitling claimant to a 42 percent permanent partial general disability based on work disability should be affirmed.

The Special Administrative Law Judge's findings of fact and conclusions of law as enumerated in the Award are found to be accurate and appropriate and are hereby adopted by the Appeals Board as its own as if specifically stated herein. The Appeals Board may have reached a slightly different percentage of work disability if we were to have decided the case in the first instance. However, the 42 percent work disability finding of the Special Administrative Law Judge falls within a reasonable range and the finding is, therefore, adopted by the Appeals Board.

The main thrust of respondent's argument as to the nature and extent of claimant's disability was that the work disability opinions of claimant's vocational expert, Doug Lindahl, should not be given any weight because the opinions were not credible. Respondent asserted that Mr. Lindahl had failed to consider claimant's capacity for vocational rehabilitation when he determined claimant's loss of labor market and a wage loss due to her work-related injuries. However, claimant's capacity for vocational rehabilitation and its affects on her labor market loss was answered by respondent's vocational expert, Michael J. Dreiling, when he testified that formal training would not open up new job markets for the claimant. Accordingly, the Appeals Board concurs with the Special Administrative Law Judge that Mr. Lindahl's opinions were credible and should be equally weighed with the opinions of Mr. Dreiling.

The decision of the Special Administrative Law Judge that claimant is entitled to a 42 percent permanent partial general disability based on work disability is affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Douglas F. Martin dated April 16, 1996, should be, and is hereby, affirmed in all respects.

All other findings and orders contained in the Award of the Special Administrative Law Judge are adopted by the Appeals Board as if specifically set forth in this Order.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
John David Jurcyk, Lenexa, KS
Douglas F. Martin, Administrative Law Judge
Philip S. Harness, Director